

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LEO CHAVEZ,)	No. EDCV 08-728-GHK (CW)
)	
Petitioner,)	ORDER OF DISMISSAL
)	
v.)	
)	
JOHN DOVEY,)	
)	
Respondent.)	

The present habeas corpus action was opened on June 2, 2008, and a Petition for Writ of Habeas Corpus (28 U.S.C. § 2254) was filed on June 17, 2008. The pro se petitioner is a state prisoner in state custody pursuant to a 2002 conviction in California Superior Court, San Bernardino County, Case No. FSB 033428. Petitioner has challenged that same conviction in a habeas petition under 28 U.S.C. § 2254 which is still pending in this court as Leo Chavez v. Anthony Hedgpeth, Case No. EDCV 04-464-GHK(CW).

The present petition should have been filed as a motion for leave to amend, and a supplemental pleading, in Case No. EDCV 04-464, rather than being filed as the initial petition in a new action. That error

1 has now been corrected, and Petitioner has been granted leave to amend
2 in the prior action. [See No. EDCV 04-464, docket no. 49.] There is
3 no indication that Petitioner has any claims, cognizable on federal
4 habeas review, that could be raised in the present action but not in
5 No. EDCV 04-464.

6 **DISCUSSION**

7 A federal district court may entertain a habeas petition on
8 behalf of a person who is in custody pursuant to a state court
9 judgment and in violation of the Constitution, laws, or treaties of
10 the United States. 28 U.S.C. 2254(a). The court need neither grant
11 the writ nor order a return if it appears from the petition that the
12 petitioner is not entitled to relief. 28 U.S.C. § 2243; Rules
13 Governing Section 2254 Cases, 28 foll. § 2254, Rule 4.

14 The court has discretion to dismiss a pleading "that merely
15 repeats pending or previously litigated claims." Cato v. United
16 States, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995). The present petition
17 can, at most, merely repeat claims that have been or could be stated
18 in Petitioner's pending and previously filed action.

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

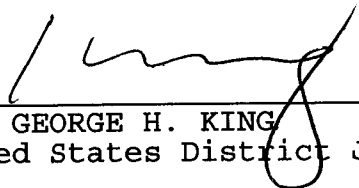
28 //

ORDERS:

IT IS THEREFORE ORDERED that judgment be entered dismissing the present action as duplicative of pending Case No. EDCV 04-464.

IT IS FURTHER ORDERED that the clerk serve this Order and the Judgment herein on Petitioner.


DATED: 3/25/10



GEORGE H. KING
United States District Judge

Presented by:

Dated: March 22, 2010



CARLA M. WOHRLE
United States Magistrate Judge